

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK

MAR 30 2010

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	2 CA-CR 2009-0340-PR
)	DEPARTMENT A
Respondent,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 111, Rules of
MICHAEL S. LIEVERS,)	the Supreme Court
)	
Petitioner.)	
_____)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR-20070207

Honorable John S. Leonardo, Judge

REVIEW GRANTED; RELIEF DENIED

Barbara LaWall, Pima County Attorney
By Jacob R. Lines

Tucson
Attorneys for Respondent

Michael S. Lievers

Kingman
In Propria Persona

HOWARD, Chief Judge.

¶1 In this petition for review, petitioner Michael Lievers challenges the trial court's order dismissing his petition for post-conviction relief filed pursuant to Rule 32, Ariz. R. Crim. P. "We will not disturb a trial court's ruling on a petition for post-

conviction relief absent a clear abuse of discretion.” *State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007). We find none here.

¶2 Lievers pled guilty to an indictment that charged him with two counts of aggravated driving or actual physical control of a motor vehicle while under the influence of an intoxicant based on his having driven while impaired to the slightest degree and with an alcohol concentration of .08 or more and having two prior convictions for violating A.R.S. §§ 28-1381, 1382 or 1383. *See* A.R.S. § 28-1383(A)(2). The trial court sentenced him to concurrent, substantially mitigated, six-year terms of imprisonment.

¶3 In his petition for post-conviction relief, Lievers appeared to challenge the factual basis for his plea, arguing that his blood alcohol level had been tested using the “Intoxilyzer 8000” which, he contended, new evidence showed produced unreliable results. He also appeared to challenge the factual basis supporting the element of actual physical control. Additionally, he contended his trial counsel had provided ineffective assistance.

¶4 Without a hearing, the trial court denied relief in a thorough decision, correctly concluding that Lievers had failed to present a colorable claim entitling him to relief. It also denied Lievers’s subsequent motion for rehearing. When a trial court has correctly identified and ruled on issues raised “in a fashion that will allow any court in the future to understand the resolution[, n]o useful purpose would be served by this court[’s] rehashing the trial court’s correct ruling in a written decision.” *State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993). The trial court did not abuse its

discretion in summarily dismissing the petition for post-conviction relief. Therefore, although we grant the petition for review, we likewise deny relief.

/s/ Joseph W. Howard
JOSEPH W. HOWARD, Chief Judge

CONCURRING:

/s/ Philip G. Espinosa
PHILIP G. ESPINOSA, Presiding Judge

/s/ Virginia C. Kelly
VIRGINIA C. KELLY, Judge